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Clerk of the Superior Court
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ORANGE

11 THE PEOPLE OF THE STATE OF)
12 CALIFORNIA, by and through the California)
Corporations Commissioner,)

13 Plaintiff,)

14 v.)

15 CHANNEL INVESTMENTS, a business)
organization, form unknown; CHANNEL)
16 INVESTMENTS, Inc., a corporation;)
17 CHANNEL INVESTMENTS, LLC, a limited)
liability company; CHANNEL INVESTMENTS,)
18 a partnership; JAMES F. MESSINA,)
19 individually and doing business as CHANNEL)
INVESTMENTS; JAMES F. MESSINA,)
20 individually and as a partner of CHANNEL)
INVESTMENTS partnership; and DOES 1)
21 through 20, inclusive,)

22 Defendants.)
23)
24)
25)
26)
27)
28)

CASE NO.

COMPLAINT FOR PERMANENT
INJUNCTION AND INVESTOR
RESTITUTION

VIOLATIONS OF CALIFORNIA
CORPORATIONS CODE SECTION 25401
**(SALE OF SECURITIES BY MEANS OF
FALSE OR MISLEADING STATEMENTS)**

VIOLATIONS OF DESIST AND REFRAIN
ORDER ISSUED BY THE CALIFORNIA
CORPORATIONS COMMISSIONER

ASSIGNED FOR ALL PURPOSES TO:

Judge Gail A. Andler

DEPT. CX102

1 Preston DuFauchard, California Corporations Commissioner (“Commissioner”), acting to
2 protect the public from the unlawful sale of fraudulent securities, brings this action in the public
3 interest in the name of the People of the State of California. The People of the State of California
4 allege as follows based on information and belief:

5 **JURISDICTION AND VENUE**

6 1. The Commissioner brings this action to enjoin the defendants from violating the
7 provisions of the California Corporate Securities Law of 1968 (“CSL”) (Cal. Corp. Code Sections
8 25000 et seq.) and to request necessary equitable and ancillary relief. The Commissioner is
9 authorized to administer and enforce the provisions of the CSL.

10 2. The Commissioner brings this action pursuant to California Corporations Code Section
11 25530 and California Government Code Section 11180 et seq. in his capacity as head of the
12 California Department of Corporations (“Department”).

13 3. Defendants have transacted business within Orange County and other counties in
14 California. Defendants principle place of business is located in Orange County. The violations of
15 law described herein have occurred and will continue to occur, unless enjoined, within Orange
16 County and elsewhere within the State of California.

17 **DEFENDANTS**

18 4. Defendant Channel Investments (“Channel”) was at all relevant times a company with
19 its principal place of business in California at 300 N. Tustin Avenue, Suite 200, Santa Ana,
20 California 92705. Plaintiff alleges that defendant Channel is a business organization, form
21 unknown; defendant Channel is a corporation; that defendant Channel is a limited liability company;
22 and that defendant Channel is a partnership.

23 5. Defendant James F. Messina (“Messina”) is an individual who has worked from a
24 location in Orange County. Messina at all relevant times was conducting business in the county of
25 Orange and elsewhere in California. Plaintiff alleges that defendant Messina has acted in the
26 following capacities: a) Messina is the owner and operator of Channel; b) Messina was a partner of
27 Channel; and c) Messina engaged in business as a sole proprietor doing business as Channel.
28 Messina was at all times relevant hereto, a “control” person of Channel as that term is defined in

1 California Corporations Code section 160(a). Pursuant to California Corporations Code section
2 160(a), "control" means the possession, direct or indirect, of the power to direct or cause the
3 direction of the management and policies of the corporation.

4 6. Defendants Does 1 through 20 are persons, corporations, or other entities that have
5 done or will do acts otherwise alleged in this complaint. Plaintiff is informed and believes, and on
6 such information and belief alleges, that Defendants Does 1 through 20 inclusive, at all times
7 mentioned herein have acted and are continuing to act in concert with the Defendants named herein,
8 and that each of them has participated in the acts and transactions which are the subject of this
9 complaint. The true names and capacities of Does 1 through 20, whether individual, corporate, or
10 otherwise, are unknown to Plaintiff, who therefore sues such Defendants under such fictitious
11 names, pursuant to the provisions of section 474 of the California Code of Civil Procedure. Plaintiff
12 asks leave of the court to amend the complaint to allege the true names and capacities of such
13 Defendants at such time as the same have been ascertained.

14 7. Plaintiff is informed and believes and on such information and belief alleges that, at all
15 relevant times, the Defendants named as officers, directors, agents or employees, acted in such
16 capacities in connection with the acts, practices and schemes of business set forth below.

17 8. Whenever any allegation is made in this complaint to "Defendants" doing any act, the
18 allegation shall mean the act of each individual Defendant acting individually, jointly and severally
19 and the conspiring of these Defendants to so act. Each Defendant alleged to have committed any act
20 did so pursuant to and in furtherance of a common plan, scheme and conspiracy and as the agent for
21 each and every co-defendant. Each Defendant acted in conspiracy to violate the provisions of the
22 CSL.

23 9. Plaintiff is informed and believes and on such information and belief alleges that, at all
24 relevant times, each and every Defendant, directly or indirectly controlled other co-defendants by
25 knowingly inducing, or by knowingly providing substantial assistance to other co-defendants, to
26 violate the provisions of the CSL, as alleged in the complaint within the meaning of California
27 Corporations Code section 25403.

1 10. Whenever any allegation is made in this complaint to any of the corporate or entity
2 Defendants doing any act, the allegation shall mean acts done or authorized by the officers, directors,
3 agents, or employees of those Defendants while actively engaged in the management, direction, or
4 control of the affairs of the corporate or entity Defendants, and while acting within the course and
5 scope of their employment.

6 11. Plaintiff is informed and believes that at all times herein mentioned, corporate or entity
7 Defendants continued in existence as alter egos of Messina pursuant to a scheme to offer and sell
8 fraudulent securities.

9 12. At all times herein mentioned, Defendant Channel was so influenced and controlled by
10 Messina in the conduct of its business and affairs that there existed a unity of interest and ownership
11 among said parties so that adherence to the fiction of separate corporate and individual existences
12 serves to work an injustice upon the public.

STATEMENT OF FACTS

13
14 13. In or about February 2004, and continuing thereafter, the Defendants, their agents,
15 representatives and affiliates have engaged in and continue to engage in business in the State of
16 California in violation of the CSL. These violations consist of offering and selling securities in the
17 form of investment contracts and promissory notes to members of the public by means of fraud
18 despite the Commissioner issuing a Desist and Refrain Order against Channel and Messina in May
19 2006 ordering them to stop violating the CSL.

20 14. Defendants offered and sold securities in this State from on or about February 19, 2004
21 through at least June 27, 2006, in issuer transactions by means of fraud, totaling in excess of
22 \$200,000 to at least 4 known investors in multiple transactions.

23 15. Defendants offered and sold securities in California to residents of the State of
24 California and elsewhere for the alleged purpose of investing in real estate and other business
25 ventures.

26 16. Defendants offered and sold securities in California by making material
27 misrepresentations, including: a) Defendants misrepresented that Messina and Channel would invest
28 investor money in real estate and other business ventures; b) Defendants misrepresented that the

1 investment would earn a high rate of return; and c) Defendants misrepresented that an investment
2 with them was safe and backed by deeds of trust.

3 17. Defendants offered and sold securities in California by omitting material facts,
4 including: a) Defendants failed to disclose that any return of their investment money would not be
5 from any investment returns from any real estate or other business venture; b) Defendants failed to
6 disclose that Messina was using investor money for his own personal use and to also pay back other
7 investors; and c) Defendants failed to disclose to at least one investor that the Commissioner issued a
8 Desist and Refrain Order against them on May 3, 2006 for violations of Corporations Code sections
9 25110 and 25401.

10 18. On May 3, 2006, the Commissioner issued a Desist and Refrain Order against Messina
11 and Channel for violations of CSL Section 25110 for selling unqualified, non-exempt securities in
12 the form of investment contracts and promissory notes. The Commissioner ordered Messina and
13 Channel to desist and refrain from the further offer or sale in the State of California of securities in
14 the form of investment contracts and promissory notes, unless and until qualification has been made
15 under said law or unless exempt.

16 19. In addition, on May 3, 2006, the Commissioner issued a Desist and Refrain Order
17 against Defendants for violations of CSL Section 25401 for selling securities through the use of
18 material misrepresentations and omissions of material facts.

19 20. Despite Messina and Channel receiving personal service of the Commissioner's Desist
20 and Refrain Order on May 9, 2006, Defendants continued to solicit investors and sold notes
21 supposedly secured by a deed of trust to at least one investor who invested \$50,000 with Defendants,
22 expecting a \$66,000 return three months later.

23 **FIRST CAUSE OF ACTION**
24 **MISREPRESENTATIONS OR OMISSIONS OF MATERIAL**
25 **FACTS IN VIOLATION OF CALIFORNIA CORPORATIONS CODE SECTION 25401**
26 **(Against All Defendants)**

27 21. The Commissioner incorporates by reference paragraphs 1 through 20 of this
28 complaint as though fully set forth herein.

22. California Corporations Code section 25401 provides as follows:

1 It is unlawful for any person to offer or sell a security in this state or buy or offer to
2 buy a security in this state by means of any written or oral communication which
3 includes an untrue statement of a material fact or omits to state a material fact
4 necessary in order to make the statements made, in the light of the circumstances
5 under which they were made, not misleading.

6 23. In offering and selling the securities referred to herein, Defendants made untrue
7 statements and/or misrepresentations of material facts to some or all prospective or existing
8 investors. The misrepresentations included, without necessarily being limited to, the following:

9 a. Defendants misrepresented that Messina and Channel would invest investor money in
10 real estate and other business ventures;

11 b. Defendants misrepresented that the investment would earn a high rate of return; and

12 c. Defendants misrepresented that an investment with them was safe and backed by deeds
13 of trust.

14 24. In offering and selling the securities referred to herein, Defendants also omitted to state
15 material facts to some or all of the prospective or existing investors. The omissions included,
16 without necessarily being limited to, the following:

17 a. Defendants failed to disclose that any return of their investment money would not be
18 from any investment returns from any real estate or other business venture;

19 b. Defendants failed to disclose that Messina was using investor money for his own
20 personal use and to also pay back other investors; and

21 c. Defendants failed to disclose to at least one investor that the Commissioner issued a
22 Desist and Refrain Order against them on May 3, 2006 for violations of Corporations Code sections
23 25110 and 25401.

24 25. The misstatements and omissions referred to herein were of "material facts" within the
25 meaning of California Corporations Code section 25401.

26 26. Defendants and each of them, made untrue statements and/or omitted to disclose
27 material facts in connection with the offer and sale of securities in violation of California
28 Corporations Code section 25401.

1 27. Unless enjoined by this Court, Defendants and each of them, will continue to violate
2 California Corporations Code section 25401.

3 **SECOND CAUSE OF ACTION**
4 **VIOLATIONS OF PRIOR DESIST AND REFRAIN ORDER ISSUED BY THE**
5 **COMMISSIONER**
6 **(Against All Defendants)**

7 28. Plaintiff incorporates by reference paragraphs 1 through 27 of this Complaint as
8 though fully set forth herein.

9 29. Corporations Code section 25530 provides, in pertinent part, as follows:

10 (a) Whenever it appears to the commissioner that any person has engaged or is
11 about to engage in any act or practice constituting a violation of any provision of
12 this division or any rule or order hereunder, the commissioner may in the
13 commissioner's discretion bring an action in the name of the people of the State
14 of California in the superior court to enjoin the acts or practices or to enforce
15 compliance with this law or any rule or order hereunder....

16 30. On May 3, 2006, the Commissioner issued a Desist and Refrain Order against
17 Defendants Messina and Channel ordering them to immediately: 1) desist and refrain from the
18 further offer or sale in the State of California of securities in the form of investment contracts and
19 promissory notes, unless and until qualification has been made under Corporations Code section
20 25110 or unless exempt; and 2) desist and refrain from the further offer or sale of securities by
21 means of any written or oral communication which includes an untrue statement of a material fact or
22 omits to state a material fact necessary in order to make the statements made, in the light of the
23 circumstances under which they were made, not misleading

24 31. Notwithstanding the receipt and knowledge of the Desist and Refrain Orders on May
25 9, 2006, Defendants Messina and Channel continued to offer and sell securities in the State of
26 California in the form of investment contracts and promissory notes by means of untrue statements
27 and omissions of material facts, and as such are in violation of the Commissioner's Order.

28 32. Unless enjoined by this Court, Defendants and each of them will continue to violate the
Commissioner's Orders.

1 **PRAAYER**

2 WHEREFORE, plaintiff prays for judgment as follows:

3 I. AGAINST ALL DEFENDANTS:

4 1. For Orders of Permanent Injunctions enjoining all Defendants and each of them, and such
5 Does as may be subsequently named, and their officers, directors, successors in interest, agents,
6 employees, attorneys in fact, and all persons acting in concert or participating with them, from
7 directly or indirectly violating:

8 a. California Corporations Code section 25401 by offering to sell or selling any security of
9 any kind, including but not limited to, the securities described in this Complaint, by means of any
10 written or oral communication, which contains any untrue statements of any material fact or omits or
11 fails to state any material fact necessary in order to make the statements made, in the light of the
12 circumstances under which they are made, not misleading, including but not limited to the
13 misrepresentations and omissions alleged in this Complaint;

14 b. The Commissioner's Desist and Refrain Order issued against Messina and Channel in
15 May 2006;

16 c. Removing, destroying, mutilating, concealing, altering, transferring, or otherwise
17 disposing of, in any manner, any books, records, computer programs, computer files, computer print-
18 outs, correspondence, brochures, manuals, or any other writings or documents of any kind as defined
19 under California Evidence Code section 250 relating to the transactions and course of conduct as
20 alleged in the complaint in this action; and

21 d. Transferring, changing, disbursing, selling, dissipating, converting, conveying, pledging,
22 assigning, encumbering, or foreclosing or otherwise disposing of any real or personal property or
23 other assets in their possession or under their control, or in the possession of, or under the control of,
24 any of the Defendants, which property or other assets were derived or emanated from directly, or
25 indirectly, the sale and issuance of securities as alleged in this Complaint, without leave of the Court.

26 2. For a Final Judgment requiring Defendants and each of them, and such Does as may be
27 subsequently named, individually, jointly and severally, to rescind each and all of the unlawful
28 transactions alleged in this Complaint, as shall be determined by this Court to have occurred, and

1 further requiring Defendants and such Does as may be subsequently named individually, jointly and
2 severally, to pay full restitution to each person determined to have been subjected to Defendants'
3 acts or practices which constitute violations of the Corporations Code, with the total amount of funds
4 being \$168,000. In addition, to pay either the contracted rate of interest or the legal rate of interest
5 on the amounts invested by the clients from the dates of their investments to the date of judgment
6 herein.

7 **II. OTHER RELIEF:**

8 1. For an Order that this court will retain jurisdiction of this action in order to implement
9 and carry out the terms of all orders and decrees that may be entered herein or to entertain any
10 suitable application or motion by Plaintiff for additional relief within the jurisdiction of this Court.

11 2. For such other and further relief as the Court deems necessary and proper.

12 Dated: February 15, 2011

13 Los Angeles, California

14 Respectfully submitted,

15 PRESTON DuFAUCHARD
16 California Corporations Commissioner

17 By: _____
18 MICHELLE LIPTON
19 Senior Corporations Counsel
20 Attorney for Plaintiff